

REMARKS

Claims 1-49 are pending in the application. Claims 23-49 are withdrawn from further consideration as being directed to a non-elected invention. In the Office Action of April 14, 2004, the Examiner made the following disposition:

- A.) Withdrew allowance of claims 1-2 and 4-16.
- B.) Rejected claim 3 under 35 U.S.C. 112, second paragraph.
- C.) Rejected claims 1-3 and 10-22 under 35 U.S.C. §102(b) as being anticipated by *Fehn* (U.S. Patent No. 5,693,283).
- D.) Objected to claims 4-9.

Applicant respectfully traverses the rejections and addresses the Examiner's disposition as follows:

A.) Withdrawal of allowance of claims 1-2 and 4-16:

Applicant regretfully notes the Examiner's withdrawal of allowance of claims 1-2 and 4-16. As discussed below, claims 1-2 and 4-16 are allowable over the cited art.

B.) Rejection of claim 3 under 35 U.S.C. 112, second paragraph:

Claim 3 has been amended as per the Examiner's request to overcome the rejection. Specifically, claim 3 has been amended to replace the term "natural" with "non-pigmented."

Applicant respectfully submits the rejection has been overcome and requests that it be withdrawn.

C.) Rejection of claims 1-3 and 10-22 under 35 U.S.C. §102(b) as being anticipated by *Fehn* (U.S. Patent No. 5,693,283):

Applicant respectfully disagrees with the rejection.

Referring to Applicant's Figure 5 as an illustrative example, Applicant's independent claim 1 claims a container 40 comprising a wall defining an interior and an exterior of the container. At least a portion of the wall has a plurality of layers including a first layer 42 comprising polypropylene, and a second layer 44 formed on the first layer 42. The second layer 44 comprises polyethylene and has a fluorinated surface 46, 48 facing an interior of the container 40.

In a telephonic interview held with the Examiner on July 1, 2004, the Examiner agreed that *Fehn* fails to disclose a first layer comprising polypropylene and a second layer comprising polyethylene formed on the first layer, wherein the second layer has a fluorinated surface. Applicant respectfully acknowledges the Examiner's agreement. Applicant reiterates the argument that *Fehn* fails to teach the claimed subject matter below for convenience.

Fehn's Figure 7 teaches the following layer structure:

PCR/scrap/adhesive/EVOH/adhesive/PE

The Examiner previously argued that *Fehn's* PCR and scrap layers contain polypropylene, however in the telephonic interview, the Examiner agreed that they do not contain polypropylene. *Fehn* discusses using PCR at various places in its specification, however, nowhere does *Fehn* teach that its PCR includes polypropylene. Instead, *Fehn's* PCR includes polyethylene (see, e.g., col. 2, lines 22-23). The Examiner previously cited col. 1, line 60 and col. 9, lines 46-56, as support for arguing that *Fehn's* PCR layer includes polypropylene, but neither of these passages even discusses polypropylene. The Examiner also previously cited col. 2, line 47, but that passage merely discusses an internal EVOH or polypropylene barrier layer. In the telephonic interview, the Examiner agreed that those passages failed to support the Examiner's previous argument that *Fehn's* PCR layer includes polypropylene.

Further, *Fehn's* scrap layer does not contain polypropylene. *Fehn* discloses that its scrap layer can contain several materials, including polyethylene. But nowhere does *Fehn* teach that its scrap layer contains polypropylene. As is known in the art, reground trim scrap and reground bottle scrap include the plastic material that is trimmed from the neck, shoulder, handle(s), sides, and/or base of containers as they are manufactured or entire, previously made, defective containers. The reground trim or bottle scrap includes all the materials present in the container, that is, all the layers of the container, in proportional amounts of each material. Therefore, *Fehn's* container in Figure 7 does not contain polypropylene in its scrap layer, since it does not contain polypropylene in any of its other layers. In other words, the scrap layer would contain scrap from the layer structure: PCR[PE]/scrap/adhesive/EVOH/adhesive/PE.

Thus, unlike Applicant's claim 1, *Fehn's* Figure 7 fails to disclose or suggest a polypropylene layer and a fluorinated polyethylene layer.

Fehn's Figure 6 also fails to disclose a polypropylene layer and a polyethylene layer. The Examiner previously argued that Figure 6 discloses the following layer structure, however, the Examiner acknowledged in the telephonic interview that *Fehn* fails to disclose the layer structure:

PP outer/adhesive/EVOH/adhesive/PP inner

As clearly described in *Fehn* with reference to Figure 6, the outer layer is not a polypropylene layer, but is instead a PCR layer. As described above, *Fehn* discloses PCR layers containing polyethylene, but fails to disclose PCR layers containing polypropylene. Therefore, the outer layer is not a polypropylene layer, but is instead a PCR layer containing polyethylene and not polypropylene.

Further, the inner layer of Figure 6 is a polyolefin layer containing polyethylene or polypropylene. As is known in the art, the Food and Drug Administration does not sanction the use of fluorinated polypropylene in direct food contact. Accordingly, one of skill in the art would recognize that if *Fehn's* inner layer is polypropylene, that it would not be fluorinated.

Therefore, Applicant respectfully submits that *Fehn* fails to disclose or even suggest Applicant's claim 1, because *Fehn* fails to teach a polypropylene layer and a fluorinated polyethylene layer. Applicant respectfully notes that the Examiner agreed with this in the telephonic interview.

Claims 2-3 and 10-22 depend directly or indirectly from claim 1 and are therefore allowable for at least the same reasons that claim 1 is allowable.

Applicant respectfully submits the rejection has been overcome and requests that it be withdrawn.

D.) Objection to claims 4-9:

Applicant respectfully disagrees with the objection.

Independent claim 1 is allowable as discussed above. Claims 4-9 depend directly or indirectly from claim 1 and are therefore allowable for at least the same reasons that claim 1 is allowable.

Applicant respectfully submits the objection has been overcome and requests that it be withdrawn.

CONCLUSION

In view of the foregoing, it is submitted that claims 1-22 are patentable. It is therefore submitted that the application is in condition for allowance. Notice to that effect is respectfully requested.

Respectfully submitted,

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I hereby certify that this correspondence is being deposited as First Class Mail in an envelope addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on July 14, 2004.

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